IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 22280 of 2007(B)

CMA.1/2006 of SUB COURT,KATTAPPANA
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PETITIONER:

KERALA STATE FINANCIAL ENTERPRISES LTD.,
REPRESENTED BY BRANCH MANAGER,
K.S.F.E. LTD., KATTAPPANA KARA,
KATTAPPANA VILLAGE.

BY ADV. SRI.M.SASINDRAN
SRI.K.T.POULOSE (KORATTY)

RESPONDENTS:
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1. K.K.RAJAPPAN, AGED 55 YEARS,
S/O. KESAVAN, KANJIRAMMILKUNNATHIL HOUSE,
KANCHIYUR KARA, AYYAPPANCOIL VILLAGE.

2. THE ASSISTANT EDUCATIONAL OFFICER,
KATTAPPANA, KATTAPPANA KARA, KATTAPPANA VILLAGE.

BY GOVERNMENT PLEADER SRI.S.SHYSON P.MANGUZHA FOR R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts.:

Ext.P1 A true copy of the plaint in O.S.177/2005.

Ext.P2 A true copy of the R.C.L. application executed by the plaintiff in favour of the petitioner.

Ext.P3 A true copy of the objection filed by the petitioner dated 14.10.2005.

Ext.P4 A true copy of the application dated 5.8.2005.

Ext.P5 A true copy of the order dated 16.12.2005.

Ext.P6 A true copy of the application dated 11.1.2006.

Ext.P7 A true copy of the impugned order dated 12.4.2006 in CMA 1/2006

M.N.Krishnan, J.

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W.P(C).No.22280 of 2007

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Dated this the 23rd day of October, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Subordinate Judge, Kattappana in C.M.A. No.1 of 2006. The said C.M.A. was preferred against the order of the Munsiff's Court, Kattappana in I.A.No.1022 of 2005 in O.S.No.177 of 2005. Plaintiff moved an application for injunction under Order 39 Rules 1 and 2 of C.P.C. to restrain the respondent - Kerala State Financial Enterprises from attaching the gratuity due to the petitioner. The trial court disallowed the prayer for injunction. But on appeal, the learned Subordinate Judge reversed the finding and granted injunction against the proceeding of withholding the gratuity due to the plaintiff. Under ordinary circumstances, gratuity cannot be attached.

2. Now the contention of the Keralas State Financial Enterprises is to the effect that the plaintiff in the suit had agreed for the recovery from D.C.R.G. and Ext.P2(page 6) at page 19 of the Writ Petition would show that he has undertaken for recovery "and also from my terminal and other benefits." There cannot be any dispute that the D.C.R.G. is the terminal benefits conferred upon an employee.

3. Let us find out the legal position with respect to such an undertaking. In the decision reported in **Kuttan Pillai** v. **State of Kerala** - 2001 (2) K.L.T. 375, this court held thus: "A retired

employee is entitled to get only the balance amount of D.C.R.G. after deducting the amount he has consented to Government Companies to recover from his D.C.R.G." It was a case where amount was due to the Kerala Financial Corporation. In the light of the undertaking and consent that it can be recovered from the terminal benefits as well I feel that the defendant in the suit is entitled to recover the amount from the terminal benefits.

4. A Division Bench of this Court in the decision reported in **Surendran** v. **Mavelikara Primary Co-op Agrl. & R.D. Bank Ltd.** - 2005(4) K.L.T. 619 also held that it can be recovered only if the Government employee consents to such recovery. It was a case relating to a Co-op. Agricultural Bank and in that particular case, the undertaking was only to effect the recovery from the salary and therefore in that case, the court found that the meaning of the word "salary" cannot be expanded to the terminal benefits on the facts of the case. In principle, the Division Bench of this Court held that if there is a consent by the person, necessarily the court has to give weight and permission to effect the recovery has to be made from the terminal benefits as well. Therefore the finding of the learned Subordinate Judge that there is no clear mention of the D.C.R.G. cannot be accepted for the reason that the terminal benefit takes in the amount under D.C.R.G. as well. Not only that the word used is so wide. He has agreed for recovery from the terminal and other benefits.

5. Therefore, the undertaking given by the plaintiff in the case amounts to a consent and in the light of the enunciated

principles laid down in the decisions referred to above, the defendant in the suit is entitled for the recovery of the amount from the terminal benefits. There cannot be an order of injunction against that and therefore the order of the trial court refusing the injunction is confirmed and its reversal by the Subordinate Judge is set aside and the interim injunction petition is dismissed.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 24/10